In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 821

PAT BELL AND HAZEL BELL, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The United States brought this action to recover the unpaid balance and accrued interest on four promissory notes evidencing petitioners' indebtedness to the Farmers Home Administration for four loans made under the Special Livestock Loan Act (67 Stat. 149). The trial court entered judgment against both petitioners on two of the notes, in the amount of $8,497.59, and against petitioner Pat Bell on the two other notes, in the amount of $4,017.10 (259 F. Supp. 602). The court of appeals affirmed, and denied a timely motion for rehearing (380 F. 2d 682).

1. The Special Livestock Loan Act, enacted in 1953, authorized the Secretary of Agriculture to lend money to "established producers and feeders of cattle * * *

who have a good record of operations, but are unable temporarily to get the credit they need from recognized lenders and have a reasonable chance of working out their difficulties with supplementary financing." The purpose of these loans was "to assist farmers, ranchers, and stockmen to meet the emergency resulting from the drought situation now prevalent in the south-central area of the United States." H. Rep. No. 714, 83d Cong., 1st Sess., p. 2. The loans were to bear interest at the rate of 5 percent per year and were to be made on "such other terms and conditions as the Secretary shall prescribe." The Act also provided that the loans were to be approved by special committees appointed by the Secretary of Agriculture from local persons who were familiar with the livestock industry. These committees were also to perform "such additional functions * * * including general direction of the servicing of the loans, as the Secretary may prescribe" (67 Stat. 149).

The authority to make loans under the Special Livestock Loan Act, as originally passed, was for a period of two years. This authority was extended by subsequent amendments[1] and finally expired on December 31, 1961.

2. Petitioners, husband and wife, are cattle producers in Pawnee, Oklahoma. The first loan involved in this litigation was made to petitioners in September 1955, in the amount of $32,000, and was due in December 1956. At the time, petitioners had an unpaid balance of about $16,000 on an earlier loan from the

[1] 69 Stat. 366; 72 Stat. 357; 75 Stat. 220.

Farmers Home Administration due in November 1955. Petitioners' loan application, which set out the purposes for which the money was to be used, provided that petitioners would use $16,000 to purchase 250 head of cattle; that the remainder of the loan would cover "practically all" operating expenses for 1956; and that petitioners would sell the 189 head of cattle that they already owned and apply the proceeds in full payment of the previous loan from the Farmers Home Administration. The application further provided that the amount of the loan was based upon the use of land presently operated, plus some purchased feed, and that at a later date an additional loan might be made so that a number of calves could be placed on wheat pasture (Pet. App. iv–v; Pet. 12). The loan was approved by the County Committee, notwithstanding the objections of the area supervisor for the Farmers Home Administration that petitioners planned to purchase an excessive number of cattle in view of their past operations and that no new loans should be made until after the existent stock was sold and the proceeds applied on the prior loan (Pet. 16–17).

At the time petitioners obtained the loan, they were operating 900 to 1,000 acres, which would only support approximately 100 head of cattle (259 F. Supp. at 603). With the proceeds of the loan they purchased approximately 333 head of cattle for about $20,000, instead of 250 head for $16,000 as set forth in their loan application (Pet. App. v, 259 F. Supp. at 603). Furthermore, they retained the 189 head of cattle which were to have been sold in the fall of 1955

to repay the earlier loan. Since they did not raise the feed necessary to provide all of the food for their cattle, petitioners used a portion of the loan money to purchase feed to "full-feed" approximately 80 head of the cattle they had originally owned. In February 1956, the State office of the Farmers Home Administration learned that petitioners were using loan proceeds to full-feed some of their cattle and advised the County Committee that this method of feeding was prohibited by the regulations (Pet. App. v–vi).

In March 1956, petitioners received a second loan of $5,750 to enable them to lease a wheat pasture upon which to graze some of their cattle. Petitioners' application for this loan contained a provision that they would sell their cattle in September 1956 and satisfy both loans. Subsequently, in the summer of 1956, a portion of the leased premises was destroyed by fire, and in order to protect its security the Farmers Home Administration loaned $2,000 to petitioner Pat Bell, individually, in August 1956 to purchase feed for 30 days. An additional loan of $1,000 was made to Pat Bell in September 1956 to continue feeding during a meat-packing strike which had temporarily depressed the price of cattle (259 F. Supp. at 604).

In October 1956, petitioners sold their cattle and applied the proceeds to the payment of the four notes, leaving a balance due of $8,621.42 plus interest. Petitioners have admitted the execution and delivery of the notes (Pet. 11, 13–14).

3. The decisions of both courts below are correct, and are not in conflict with the decisions of any other courts of appeals. There is no occasion for further

review by this Court, particularly in view of the termination of the Special Livestock Loan program in 1961.

Petitioners' chief contention is that the State Director of the Farmers Home Administration unjustifiably interfered with the discretion of the County Committee by advising it that petitioners should not be permitted to use any part of the September 1955 loan to full-feed their cattle and that any further loans to petitioners should be conditioned on petitioners' agreement to sell their cattle in September 1956 (Pet. 35–37). The argument apparently is that the actions of the Farmers Home Administration adversely affected petitioners' operations, resulting in a deficiency on the sale of the cattle, and that accordingly they should not be held liable on their notes. We question whether this conclusion follows from its premise. In all events, however, it is plain that the actions taken by the Farmers Home Administration were in keeping with the statutory program.

The regulations issued by the Secretary of Agriculture for the administration of the Act stated that

> Loans will not be made to finance strictly feeding operations. However, loans may be made to finance feeding operations * * * in those cases in which otherwise eligible applicants are able to provide with their own resources the land necessary for providing adequate grazing and who produce substantially all of the feed required to carry the feeders to the finishing stage. [20 Fed. Reg. 1071.]

Both courts below held that this regulation prohibited petitioners from using loan funds to full-feed their

cattle and that the Farmers Home Administration acted properly in bringing this to the attention of the County Committee. The courts' interpretation is appropriate in view of the regulation's specific recognition of the "speculative nature of feeding operations" and the narrow circumstances in which feeding operations were permitted with loan funds. (*Ibid.*)

Similarly, both courts below held that the Farmers Home Administration did not act improperly in advising the County Committee that it had an obligation to protect the interests of the government and that any further loans to petitioners should be conditioned on their agreement to sell their cattle in September 1956. At the time petitioners applied for the March 1956 Loan they had more than 400 head of cattle, no feed and no money, and they already owed the government more than $43,000 (259 F. Supp. at 605). Petitioners had violated the terms of their 1955 plan and the applicable regulations by purchasing an excessive number of cattle and retaining their existing herd.[2] The court of appeals concurred in the trial judge's finding that petitioners' "precarious situation and financial embarrassment were not the result of any coercive acts of the Government, but the result of their own actions in buying more cattle than their land and resources would support" (259 F. Supp. at 605). Furthermore, as the district court explained, there was

[2] "§ 384.5 *Loan Purposes.* (a) Special Livestock loans may be made for purposes which are essential to carrying on livestock operations, such as the following: * * *

(9) The purchase of livestock for replacement or restocking purposes but not to permit material expansion of normal operations." (18 Fed. Reg. 4945.)

ample justification for requiring that the cattle be sold in the fall:

> * * * it appeared to be the best time for the defendants to sell their cattle. It was near the end of the grazing season and the defendants did not have the resources to winter their cattle. There was no assurance that cattle prices would be better at a later date. They could not have carried the cattle through the winter without another large loan from the Government, which would not have been sound for the borrower or economically safe for the Government. [259 F. Supp. at 605.]

Petitioners are in error in asserting that the decision below conflicts with *United States* v. *Wiley's Cove Ranch,* 295 F.2d 436 (C.A. 8, 1961) (Pet. 32–34, 43). The *Wiley's Cove Ranch* case involved a suit by the United States to recover the value of feed grants made under the 1954 Emergency Feed Program. After a County Committee had approved and made grants to defendant, the National Office of the Farmers Home Administration overruled the action of the County Committee and sought reimbursement for benefits already received. The Eighth Circuit affirmed the trial court's granting of summary judgment for the defendant, stating that the County Committee's determination of eligibility to receive benefits was "agency action by law committed to agency discretion" and not subject to judicial review (295 F.2d at 443). In the present case, on the other hand, the Farmers Home Administration did not attempt to overrule or nullify the action of the County Committee in approving loans. The Administration merely

advised the Committee of the correct course to follow in supervising petitioners' loans and in approving *future* loans to petitioners and to other applicants. And the County Committee itself approved the last three loans to provide additional feed on condition that petitioners sell their cattle in the fall of 1956. Unlike *Wiley's Cove Ranch,* there is no question in this case of judicial review of the County Committee's determination.[3]

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1967.

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[3] The other decisions cited in the petition are not in point. *United States* v. *Chas. M. Dunning Construction Co.*, 223 F. 2d 723 (C.A. 10) (Pet. 40–41) involved a suit by a war contractor to recover losses under the Lucas Act. *United States* v. *Maxwell*, 278 F. 2d 206 (C.A. 8) (Pet. 41–43) was a suit to recover penalties under the Soil Bank Act.

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